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as acquirer of certain assets and liabilities of
7 Washington Mutual Bank from the Federal Deposit
Insurance Corporation acting as receiver, and
8 California Reconveyance Company

9 **UNITED STATES DISTRICT COURT**
10 **FOR THE DISTRICT OF ARIZONA**

11 George M Walker and Diane W. Walker,
12 husband and wife,

13 Plaintiffs,

14 v.

15 Washington Mutual Bank, F.A.; JPMorgan
Chase Bank N.A.; California Reconveyance
16 Company; Security Title Agency,

17 Defendants.

No. CV11-0584-PHX-SRB

**REPLY IN SUPPORT OF
MOTION TO DISMISS
PLAINTIFFS' COMPLAINT**

18 Defendants JPMorgan Chase Bank, N.A. ("Chase"), as acquirer of certain assets and
19 liabilities of Washington Mutual Bank ("WaMu") from the Federal Deposit Insurance
20 Corporation ("FDIC") acting as receiver, and California Reconveyance Company ("CRC") (the
21 "Moving Defendants") respectfully submit this reply in support of their motion to dismiss. The
22 reply is supported by the following memorandum of points and authorities, and the Court's
23 record, which are incorporated herein.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Although Plaintiffs deny that they are asserting a “show me the note” case, the
 3 allegations of their Complaint indicate otherwise. Even in their response, Plaintiffs continue
 4 to complain that there “is not sufficient proof that [Chase] acquired the specific loan subject
 5 to this litigation.” Response, at 3. And, “Defendants herein failed to produce the contract, the
 6 Note, or the Deed upon which they assert their right to foreclose.” Response, at 5.
 7 “Defendants’ [sic] attempt to foreclose without providing any admissible evidence that would
 8 entitle them to foreclose.” Response, at 7. “None of the defendants had presented any
 9 admissible evidence to prove their standing.” Response, at 8. They repeat this type of
 10 assertion often enough that it should be apparent that they seek that to which they are not
 11 entitled: showing of the note.

12 **I. The Motion to Dismiss Standard**

13 Plaintiffs do not dispute the standards properly set forth in the Motion to Dismiss.

14 **II. The Complaint Violates Basic Pleading Rules.**

15 Although Plaintiffs dispute that their Complaint is defective, they do not explain how
 16 they believe it satisfies Rules 8 or 10. For purposes of this Motion to Dismiss, however, the
 17 lack of compliance with these rules is not what causes their Complaint to fail to state a claim
 18 upon which relief can be granted. That shortcoming is a substantive failure for which Plaintiffs
 19 do not offer any cure.

20 **III. WaMu Receivership May Preclude Claims.**

21 For clarification, WaMu is not appearing in this action through undersigned counsel.
 22 In fact, WaMu cannot be sued at all until Plaintiffs exhaust certain administrative remedies, and
 23 then it can only be sued in certain jurisdictions, and Arizona is not one of them. *See* Motion
 24 to Dismiss, at 3-6.

1 **IV. “Show Me The Note” Theory Does Not State a Claim.**

2 To the extent Plaintiffs’ Complaint does depend on any “show me the note” theory or
3 derivative thereof, it should be dismissed. Plaintiffs do not persuasively challenge this
4 proposition.

5 **V. RESPA and FDCPA Do Not Provide a Basis for Recovery.**

6 Plaintiffs do not articulate any viable claim under federal law. They devote significant
7 space to discussing 16 C.F.R. § 433.2, but that regulation does not apply to the note or deed
8 of trust involved in this case.

9 Perhaps to bolster a type of assignee liability theory, the SAC
10 refers to the Federal Trade Commission (“FTC”) Holder Rule, 16
11 C.F.R. § 433.2. *See* SAC ¶ 32. Under the Holder Rule “a
12 consumer-debtor may assert against a creditor-assignee of a
13 consumer credit contract any and all affirmative claims for
14 recovery, as well as defenses, that the consumer-debtor would be
15 entitled to assert against the seller had the contract not been
16 assigned.” *State ex rel. Stenberg v. Consumer’s Choice Foods,*
17 *Inc.*, 276 Neb. 481, 755 N.W.2d 583, 589 (Neb. 2008) (quoting
18 *Beemus v. Interstate Nat’l Dealer Servs.*, 2003 PA Super 177, 823
19 A.2d 979, 986 (Pa. Super. 2003)). ***The FTC Holder Rule,***
20 ***however, does not apply to mortgage loans.***

21 *Araki v. Bank of Am.*, 2010 U.S. Dist. LEXIS 140652 (D. Haw. 2010)(emphasis added).
22 Additionally, the Fair Debt Collection Practices Act simply does not apply here for the reasons
23 given in the Motion to Dismiss.

24 **VI. Fraud**

25 Plaintiffs do nothing to rehabilitate their various fraud claims, including concealment
26 and misrepresentation. Their claims seem focused on what they characterize as the
“fraudulent conversion of their property” (Complaint, at 13), and concealment as to the role
of various entities. But whether it is viewed common law fraud or statutory consumer fraud,
Plaintiffs have stated no viable claim.

1 **VII. Quiet Title**

2 In addition to being unable to meet the statutory requirements to plead this cause of
3 action, there is a more fundamental failing, which Plaintiffs do not dispute. They have not and
4 cannot allege that they have paid off their loan. As a matter of law, therefore, quiet title cannot
5 be granted. *Salazar v. Lehman Bros. Bank*, 2010 U.S. Dist. LEXIS 108737 *17 (D. Ariz.
6 2010).

7 **VIII. Conclusion**

8 There is no viable legal claim stated here. To the extent Plaintiffs challenge the
9 involvement of Security Title Agency, those claims are not addressed herein because they are
10 not relevant to the Moving Defendants. Moreover, Plaintiffs have now stipulated to dismiss
11 Security Title Agency from the case. Under all the circumstances, Chase and CRC request that
12 the Court dismiss the Complaint, with prejudice.

13 RESPECTFULLY SUBMITTED this 17th day of May, 2011.

14 **MAYNARD CRONIN ERICKSON**
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21 **ORIGINAL** of the foregoing e-filed this 17th day of May, 2011, with:

22 Clerk of the Court
23 United States District Court
24 401 W. Washington St.
25 Phoenix, AZ 85003
26

1 **COPY** of the foregoing delivered via ECF this 17th day of May, 2011, to:

2 Honorable Susan R. Bolton
3 United States District Court
4 401 W. Washington St.
5 Phoenix, AZ 85003

6 **COPY** of the foregoing mailed this 17th day of May, 2011, to:

7 George and Diane Walker
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10 Plaintiffs pro se

11 By /s/Stacey Tanner